

EXHIBIT R

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
3 CHARLESTON DIVISION

4 Master File No. 2:12-MD-02327

5 * * * * *

6 IN RE: ETHICON, INC. PELVIC * MDL 2327

7 PRODUCTS REPAIR SYSTEM * Joseph R. Goodwin
 U.S. District

8 LIABILITY LITIGATION * Judge

9 * * * * *

10 THIS DOCUMENT RELATES TO ALL CASES
11 AND VARIOUS OTHER CROSS-NOTICED ACTIONS

12

13 CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

14

15 VIDEOTAPED DEPOSITION OF CHERYL H. BOGARDUS

16 The Executive Center at Exchange Place, LLC

17 21 W. Main Street

18 Waterbury, Connecticut

19 August 30, 2013 10:13 a.m.

20

21

22 Reported by: Maryellen Coughlin, RPR/CRR

23

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1 Q. So you didn't look in any files
2 that you might have had at home or any office
3 relating to that subject?

4 A. No.

5 Q. Are you aware that in connection
6 with the discovery in this case that Ethicon was
7 unable to produce any custodial file for you? In
8 other words, a file containing documents,
9 electronic or paper documents that you had had
10 when you were at the company, are you aware of
11 that?

12 A. I was told that.

13 Q. Okay. And do you have any
14 understanding regarding why it is that the
15 company -- what is your understanding regarding
16 why it is that the company does not have any
17 files relating to you when you were at the
18 company, a custodial file for you?

19 A. I have no idea.

20 Q. No?

21 A. Why they don't have records of my
22 e-mails?

23 Q. Right.

24 A. I don't know.

25 Q. Okay. When you left the employment

1 of Ethicon, which I guess was in 2007 --

2 A. Yes.

3 Q. -- around May of 2007.

4 When you left Ethicon, did you
5 delete, discard or destroy any paper or
6 electronic documents that you might have had in
7 your office or on your computer at that time?

8 A. No.

9 Q. So as far as you know, all of those
10 documents would have been still on your computer
11 or in the company's computers or in your files at
12 the time you left, right?

13 A. Yes.

14 Q. Did you take copies of -- either
15 originals or copies of any documents --

16 A. No.

17 Q. -- when you left the company?

18 A. No, I did not.

19 Q. Prior to the termination of your
20 employment, did you ever take any documents or
21 did you ever have any documents either on any
22 home computer or in any files that you maintained
23 at your home, that is to say Ethicon-related
24 documents?

25 A. I don't remember anything

1 specifically. I kept records of the required
2 documents that I was required to sign, like the
3 secrecy agreement and things like that, but I did
4 not keep anything that was company related to my
5 job or would have been confidential.

6 Q. Okay. So I take it from that that
7 you may have at home a file that contains things
8 like an agreement between -- an employment
9 agreement or a confidentiality agreement that you
10 might have had with Ethicon, but you would not
11 have any files relating to let's say business
12 matters?

13 A. No.

14 Q. Okay. And would the same be true
15 of your home computer?

16 A. Yes.

17 Q. Okay. So as far as you know
18 sitting here today, the only documents that you
19 would be aware of that would relate to let's say
20 pelvic floor products at Ethicon, those, if they
21 existed at the time of your termination, they
22 would be on the company's computers or in the
23 company's files, and you don't have any copies;
24 is that fair?

25 A. It is fair to say I don't have any

1 copies.

2 Q. Okay.

3 A. I don't know -- I know the day I
4 left I hadn't touched anything --

5 Q. Okay.

6 A. -- and that's all I know.

7 Q. Okay. Do you have any reason to
8 believe before you left that any -- not
9 immediately before you left but at any time
10 before you left that any documents relating to
11 pelvic floor products had been deleted, discarded
12 or destroyed?

13 A. No. I mean, certainly not
14 intentionally and --

15 Q. Okay.

16 A. You normally delete things not to
17 fill up your e-mail, so I'm sure I deleted
18 something at some time.

19 Q. So other than in the ordinary
20 course of business when an e-mail comes in and
21 you don't feel you need it anymore or it's a
22 trivial e-mail, other than that sort of routine
23 thing that we all do, you don't recall any
24 particular deleting, discarding or --

25 A. No.

1 Q. -- disposal or destruction of
2 documents?

3 A. No, I don't.

4 Q. Are you aware that Ethicon had a
5 practice of routinely getting rid of documents as
6 part of a formal document retention program?

7 A. There was a document retention
8 program. I don't remember the specifics of it.

9 Q. Okay. Do you remember that as part
10 of that document retention program there was an
11 annual purge of documents where people were
12 suppose to go through and get rid of stuff that
13 was not needed?

14 A. I don't remember that it was
15 annual.

16 Q. Okay.

17 A. I don't remember the specifics of
18 it.

19 Q. Do you recall ever having done it?

20 A. I don't recall having done it, but
21 I would only guess that if it was a requirement I
22 would have done it.

23 Q. Okay. Do you recall having ever
24 received a memo or a note or something or some
25 kind of e-mail communication telling you, okay,

1 it's time to comply with the document retention
2 program?

3 A. Yes. Vaguely, yes, because there
4 was a process in place, and part of that process
5 would have been getting some type of notification
6 at some time.

7 Q. Okay. And do you recall that as
8 part of that process you were also from time to
9 time told that certain documents should be held
10 on to because of litigation?

11 A. I don't remember ever being told to
12 hold on to a document because of litigation.

13 Q. Never?

14 A. Never.

15 Q. And you don't remember ever getting
16 either a e-mail or a written communication
17 telling you to hold on to documents?

18 A. No, I don't remember that. I mean,
19 specific to a legal matter?

20 Q. Either specific to a legal matter
21 or in particular a --

22 A. Or any time. I don't remember ever
23 being asked to hold on to any documents.

24 Q. Okay. During the course of your
25 work at Ethicon, where did you -- if you kept

1 paper or electronic documents, where did you keep
2 them? And I take it -- by that I mean
3 physically, if it was paper, or electronically
4 where was it stored if it was electronic or if
5 there's some other place.

6 A. Well, I obviously had files in my
7 workspace --

8 Q. Okay.

9 A. -- and on my computer.

10 Q. Okay. And other than files that --
11 now, in your workspace, I take it that would be
12 in -- you had an office?

13 A. I had an office until the last six
14 months I was there.

15 Q. Okay. And I don't want to make
16 this more complicated than it needs to be but,
17 'cause you may have moved, but I'm trying to get
18 a sense of -- let's talk about in the last six
19 months when you were there. Did you still have
20 the same files, maintain basically the same
21 collection of files that you had had the six
22 months prior to that, or was it like a new set of
23 files?

24 A. I don't remember.

25 Q. Okay.

1 A. I had five different positions in
2 six years --

3 Q. Right.

4 A. -- and I'm sure I passed files on
5 to other people. I must have. I'm guessing
6 again but.

7 Q. At the time you left, paper
8 files --

9 A. Mm-hmm.

10 Q. -- where were they located and how
11 voluminous were they?

12 A. Well, I had a small cubicle, so
13 they weren't that voluminous.

14 Q. Okay.

15 A. But they were in file drawings.

16 Q. About how many file draws?

17 A. I'm trying to remember.

18 Q. Was it like a four- or five-draw
19 file cabinet or was it like a smaller file
20 cabinet next to your desk?

21 A. There was a two-draw file cabinet
22 that was, you know, about three, four feet long.

23 Q. Okay. So, in other words, the draw
24 was about three or four feet deep?

25 A. No, long.

1 Q. Oh, wide. So it was like lateral
2 files?

3 A. Wide, yes, wide.

4 Q. Okay. So two draws about three or
5 four feet long?

6 A. (Witness nods.)

7 Q. And were those two draws relatively
8 full of files?

9 A. I don't remember.

10 Q. Okay. Were there files in both,
11 files in both draws?

12 A. Yes.

13 Q. Okay. And it probably was not
14 completely jammed full of documents, right, or
15 was it?

16 A. I don't remember. That was a long
17 time ago, over six years ago.

18 Q. Okay. I appreciate that. Now --
19 and for electronic documents, those would be on
20 your computer, right?

21 A. (Witness nods.)

22 Q. Did you have some kind of a system
23 of how you filed e-mails? How did you do that?

24 A. Probably a system in my own head,
25 but I filed typically by people and subject.

1 Q. Actually, you're getting ahead of
2 me.

3 Did you use like a program like
4 Outlook or something like that to keep track of
5 your e-mails?

6 A. Yes, Outlook.

7 Q. Okay. And so you could set up your
8 own little folders in Outlook?

9 A. Folders, right.

10 MS. MAIMBOURG: You know what,
11 Cheryl, wait until he finishes asking the
12 question 'cause you two are talking over each
13 other.

14 THE WITNESS: Sorry.

15 MR. SHERIDAN: Yeah, I was going to
16 say that. I will try not to interrupt you --

17 THE WITNESS: Sorry.

18 MR. SHERIDAN: -- but it will make
19 it more easy for the court reporter to get
20 everything.

21 So you used Outlook and you set up
22 a system of folders to save e-mails, right?

23 A. Yes.

24 Q. And the folders were just folders
25 that you set up yourself based on what you

1 thought was a good way to organize your e-mails,
2 right?

3 A. Yes.

4 Q. Okay. And when you left the
5 company, that -- as far as you know, that e-mail
6 structure and folder structure was still in
7 place?

8 A. Yes.

9 Q. So e-mails that you had saved there
10 should still have been there, right?

11 A. Yes.

12 Q. Okay. Now, you were with Ethicon
13 from approximately 2001 until I guess it was
14 about May of 2007, right?

15 A. Right.

16 Q. A period of about six and a half
17 years?

18 A. A little less, yes.

19 Q. Okay. And during the course of
20 that period of time, would it be fair to say you
21 had a lot of communications that related to
22 pelvic floor products?

23 A. During the time I was there, I
24 worked on the incontinence and pelvic floor area,
25 my first two years and four months, and then

1 until the last about six months I was there I
2 didn't have -- my work didn't involve
3 commercialization of incontinence and pelvic
4 floor products.

5 Q. Okay. Well, during the period of
6 time when you were working on incontinence and
7 pelvic floor products, do you have any idea how
8 many e-mails you would have either sent -- that
9 you sent or received that would relate to those
10 issues?

11 A. I have no idea.

12 Q. Would it have been thousands?

13 A. I have no way of quantifying my
14 work 12 years ago and how much -- and how many
15 e-mails I sent or received.

16 Q. Okay. Did you send or receive a
17 lot of e-mails during your work at Ethicon during
18 that period of time?

19 A. What would a lot be? I don't know
20 what you mean by this.

21 Q. How about would you send or receive
22 let's say a hundred e-mails a day?

23 A. Possibly.

24 MS. MAIMBOURG: Could I just
25 clarify? Are you talking about the early 2000

1 period? Remember, she said she only dealt with
2 incontinence the first two years and four
3 months --

4 MR. SHERIDAN: Okay.

5 MS. MAIMBOURG: -- and then her
6 last six months. And certainly I think people's
7 e-mail habits changed over that decade, so I'm
8 just trying to seek some clarification as to what
9 you're asking her.

10 Q. Okay. During the period of time
11 that you had some involvement with incontinence
12 or pelvic floor products, would it be fair to say
13 you sent or received something on the range of a
14 hundred e-mails a day?

15 A. Yes.

16 Q. Okay. During the course of your
17 work at Ethicon, did anyone ever ask you to
18 collect and save any documents relating to
19 incontinence or pelvic floor products?

20 Let me amend that. In connection
21 with any type of litigation.

22 A. No, not that I remember.

23 Q. Okay. Could you please describe
24 for us your educational background after high
25 school?